STATUTE INVOLVED.

§ 9. Production from pool; drilling units; equitable share; rules and regulations

* * * * * *

B. For the prevention of waste and to avoid the drilling of unnecessary wells, the commissioner shall establish a drilling unit or units for each pool, except for those pools which, prior to July 31, 1940, had been developed to an extent and where conditions exist making it impracticable or unreasonable to use a drilling unit at the present stage of development. A drilling unit, as contemplated herein, means the maximum area which may be efficiently and economically drained by one well. This unit shall constitute a developed area as long as a well is located thereon which is capable of producing oil or gas in paying quantities. . . . L.S.A.-R.S. 30:9(B). As amended Acts 1960, No. 442, § 1.

PER CURIAM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21738

R. E. KELLERMAN, ET AL.,
Appellants,

versus

PRESTON J. MILLER,
Appellee.

Appeal from the United States District Court for the Western District of Louisiana.

(December 16, 1965.)

Before WOODBURY,* JONES and GEWIN, Circuit Judges.

PER CURIAM: This diversity case presents difficult questions of law under a mineral lease of a 78 acre tract of land located in the State of Louisiana. The trial court correctly observed, "The undeniable fact is that with only 78 acres included in the lease, the form of the lease was just not suitable for operations in a gas area." The United States District Court for the Western District of Louisiana rendered summary judgment cancelling the lease in a suit filed by the lessor. *Miller v. Kellerman*, 228 F.Supp. 446 (W.D. La. 1964).

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* Senior Judge of the First Circuit, sitting by designation.

Under the requirements of the *Erie* doctrine we must make the best guess possible as to the applicable law of the State of Louisiana. This task is not without serious difficulty. The Louisiana cases deal with a variety of factual situations and numerous types of leases containing provisions peculiarly suited to the property involved in the individual leases. We are not critical of the Louisiana decisions, but the case law on the subject of oil and gas leases is not as clearly defined as it is in other areas. There are a wide variety of opinions and interpretations apparent from the cases and legal commentaries.

At the suggestion of this court the parties filed extensive and very helpful supplemental briefs. We have given careful and tedious consideration to all the contentions of the parties. Such contentions are widely divergent and reflect irreconcilable conflicts as to the law of Louisiana. It seems appropriate to note that the parties themselves have taken inconsistent positions at various stages of the proceedings.

We have reached the conclusion that the trial court made a proper interpretation of the lease as to the payment of delay rentals and the default of the appellant-lessees in failing to make such payments according to the terms of the lease. We are unable to render any more reasonable interpretation of the lease after a meticulous consideration of the other possible interpretations of its provisions. The opinion of the trial court reflects a cautious and careful consideration of the equitable principles involved. We are unable to disagree with his interpretation,

or to find any improper application of these principles in the exercise of a wise discretion which must guide the court in the circumstances and under the facts presented in this case. As pointed out by the trial court, it discussed some matters which it deemed unnecessary to consider in order to arrive at the conclusion reached, but attention was given to such matters because of their possible bearing on "the equities involved." Upon consideration of the entire record, we conclude that there was no error which would require a reversal. Accordingly, the judgment is AFFIRMED.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21738

D. C. Docket No. 8645—Civil Action

R. E. KELLERMAN, ET AL,

Appellants,

versus

PRESTON J. MILLER,

Appellee.

Appeal from the United States District Court for the Western District of Louisiana.

Before WOODBURY,* JONES and GEWIN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, R. E. Kellerman, and others, be condemned, in solido, to pay the costs of this Court for which execution may be issued out of the said District Court.

December 16, 1965.

Issued as Mandate: Feb. 2, 1966.

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* Senior Judge of the First Circuit, sitting by designation.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, DENYING PETITIONERS' PETITION FOR REHEARING AND REHEARING *EN BANC.*

[462]—Gewin

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 21,738

R. E. KELLERMAN, ET AL.,
Appellants,

versus

PRESTON J. MILLER,
Appellee.

Appeal from the United States District Court for the Western District of Louisiana

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(January 25, 1966)

ON PETITION FOR REHEARING

Before WOODBURY,* JONES and GEWIN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing in the above entitled and numbered cause be, and the same is hereby DENIED.